

REMARKS

Reconsideration of the subject patent application is respectfully requested.

Claims 22-28 and 31-40 are presently pending in this application and these claims have been rejected based on one or more cited prior art references. More specifically, claims 22-24, 27, 28, 32, 35, 37, 39, and 40 are rejected under 35 U.S.C. §102(b) as being anticipated by Pampuch. Claims 25, 26, 31, 33, and 34 are rejected under 35 U.S.C. §103(a) as being unpatentable over Pampuch. Claims 36 and 38 are rejected under 35 U.S.C. §103(a) as being unpatentable over Pampuch in view of Wood.

The Examiner's rejection of the pending claims is based on an interpretation of the Pampuch reference which Applicant contends is not supported by the Pampuch disclosure. Further, Pampuch focuses on a "connection" scheme which requires a specific style of mask. Whether the Examiner's interpretation of Pampuch is based on hindsight knowledge directed to what is needed to reject the claims or based on adding details to the sparse disclosure of Pampuch, one can only speculate. However, considering these two possibilities, it is clear that since the Examiner knows what has to be created out of Pampuch in order to reject the claims, there is likely a temptation to rely, at least some degree, on hindsight knowledge. It is also clear that the Pampuch disclosure is sparse on structural details and drawings with regard to the "embodiment" (?) which the Examiner relies upon. The consequence of this deficiency is that the Examiner has to try and read between the lines and try to fill in some of the missing information by guesswork. Whether the Examiner is able to do this accurately or not, the fact is that Pampuch fails to "teach" the claimed invention. Pampuch can only function

with a specific and limited style of mask, while the claimed invention is able to adapt to any style of mask. The structure of Pampuch which can be determined without speculation and guesswork is described in Column 1, line 67, through Column 2, line 11. This structure is different from the claimed invention. This description of the primary and only illustrated embodiment does not provide an elastic hem with peripheral sealing elements. Further, the claimed invention does not involve the need to provide a specific style of mask.

The Examiner's reliance on Pampuch relative to the content of claim 22 is explained on pages 2 and 3 of the Office Action. Considering the recitation of a "plurality of peripheral sealing elements", the Examiner contends that Column 2, lines 12-16 of Pampuch provide a disclosure of this recited structure. Applicant disagrees.

First, it is clear that the primary embodiment of Pampuch, i.e., the one which is illustrated, does not include the recited peripheral sealing elements. In hopes of covering this obvious deficiency, the Examiner relies on the suggestion of Pampuch that the elastic band could also be provided with ribs. However, this brief disclosure, without any drawing, forces one to guess at the actual structure. This guessing means that there is no requisite teaching.

The mention of laterally spaced ribs in Column 2, line 15, might only include two cooperating ribs which are constructed and arranged to interfit with rib 3 of the mask. Accordingly, these added ribs would only be for the purpose of the mechanical connection and not for any sealing function. Therefore, there is no basis, other than through the use of hindsight knowledge, for the Examiner to automatically assume that the brief reference to "ribs" would actually be ribs specifically constructed and styled so

as to function as sealing elements. It is just as logical to assume, given the primary focus of the Pampuch reference, that the referenced ribs would be used for the mechanical connection only and not as part of any sealing function.

As the Pampuch title indicates and as disclosed, this reference is directed to a “connection” between two different parts. It is the manner of “connection” involving rib 3 and groove 5c which is the focus of the disclosed embodiment. The structure which is supposed to enable or provide for the desired sealing of the connection interface seems to be a secondary consideration. There is nothing disclosed in Pampuch which would indicate the ability of the one portion (protective suit 4) to be able to seal an interface without also having the cooperating “connection” structure of the other portion provided by the respirator mask 1. Both structures (protective suit 4 and respirator mask 1) with their specific styles as disclosed must be used together in order to achieve the desired connection and any sealing. Throughout all of the discussion regarding the connection and the gas-tight joint, there is no mention of having peripheral sealing elements as part of the protective suit 4. In this regard, the disclosure of Pampuch, beginning at Column 1, line 67, through Column 2, line 11, is highly relevant.

Pampuch dictates that we must have a very specific styling of the ribs on the mask and the grooves in the band 5 of the suit 4 in order for these two structures to fit together so that the combined structure achieves the connection objective. The objective is for at least two labyrinths to be provided (Column 2, lines 10-11) in order for the desired mechanical connection to be achieved and in order to produce a reliable gas-tight joint (Column 2, lines 6-7). Another question regarding the Pampuch structure which is posed, and one which must be answered, is directed to the importance of the interfit of rib 3 into

groove 5c relative to any sealing performed by the other ribs 2, 2a. Would we have any sealing if we do not have the mechanical connection? If not, then this merely reinforces the fact that the suit alone is not capable of sealing independently of this specifically-configured mask. As is clearly disclosed in Pampuch, both a uniquely styled suit and a specifically-configured mask must be used together in order to create the disclosed structure. What the Examiner wants to do is use the mere mention of “ribs” on the elastic band as a teaching of a “plurality of peripheral sealing elements”. As noted, there is no basis for this conclusion, as these ribs might only be applicable to an interfit with rib 3 and this is only applicable to the mechanical connection between these two uniquely styled parts. Pampuch makes it clear that the gas-tight joint is based only on ribs 2 and 2a and not on the use of rib 3. If the ribs added to the elastic band are used in cooperation with rib 3 for the mechanical connection, then there is absolutely no basis to interpret Pampuch as providing the recited plurality of peripheral sealing elements on the elastic band. The Examiner’s assumption, as set forth in the Office Action, must surely be based on hindsight knowledge since there is no disclosure or teaching of this structure in the Pampuch reference.

The combination of the Wood reference with Pampuch does not correct the noted deficiencies of Pampuch.

It is clear that nothing in Pampuch teaches the construction of a hood with an elastic hem with a plurality of peripheral sealing elements. What is actually disclosed in Pampuch shows this fundamental and critical difference. The suit of Pampuch, as disclosed and illustrated, does not include a plurality of peripheral sealing elements. The abbreviated mention of putting spaced ribs on the elastic band cannot be a basis to

assume that these ribs are used for sealing. The primary focus of Pampuch is on the “connection” and thus the most logical assumption, if we are going to engage in guesswork, is that these ribs would be used with rib 3 for only the mechanical connection.

A further deficiency of Pampuch is that whatever connection is achieved and whatever gas-tight joint is achieved must have a unique and specifically styled mask. The suit alone cannot achieve either function. If the Examiner elects to contend or assert that the added ribs in combination with rib 3 (i.e., the mechanical connection) creates sealing, then it would be based on rib 3 being tightly wedged between the two added ribs. These three ribs in combination would, under this hypothetical example, constitute a single sealing element. The wedging action for sealing means that a single added rib, in combination with rib 3, would not create a seal. This means that even if the two added ribs are added to the elastic band of the suit and used in combination with rib 3, we still do not have a “plurality” of peripheral sealing elements.

Based on the foregoing explanations and analysis, claims 22-28 and 31-40 are in condition for allowance and favorable action by the Examiner is requested.

Considering that this is a response to a Final Action, the Examiner is requested to contact the undersigned attorney of record in order to schedule a telephonic interview if the Examiner is not prepared to allow all pending claims. The purpose of this telephonic interview is two-fold. One purpose would be to determine if any of the arguments would support patentability with further claim amendments as suggested by the Examiner. The

other purpose is to get a more complete understanding of the Examiner's position so that the Applicant can decide between a RCE filing or Appeal.

Respectfully submitted,

By James M. Durlacher
James M. Durlacher, Reg. No. 28,840
Woodard, Emhardt, Moriarty,
McNett & Henry LLP
111 Monument Circle, Suite 3700
Indianapolis, Indiana 46204-5137
(317) 634-3456